REPORT

OF THE

Committee appointed to enquire into the expediency of bringing in a bill to enable the people to vote at the next General Election,

FOR OR AGAINST A

CONVENTION,

TO REVISE AND AMEND THE CONSTITUTION OF THIS COMMONWEALTH.

Read in the House of Representatives, Feb. 23, 1824.

Mr. AUDENRIED, CHAIRMAN.

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REPORT, &c.

The committee to whom was referred the resolution directing them to enquire into the expediency of bringing in a bill, with such provisions as will enable the people to vote at the next general election, for or against a convention, to revise and amend the constitution of this commonwealth, thereby to ascertain whether the people, the source of all power, are favorably disposed to such a call,

REPORT:

THAT after having deliberated upon the important subject submitted to them, with all that care and attention which its delicacy and its magnitude imperiously demanded, they now submit the following remarks, accompanied by a bill, to the consideration of the House.

It is no longer necessary, by a laborious train of reasoning, to prove that it is the right of the people, of every community, to ordain and establish what form of government they please, and that it is equally at all times their right to revise, change, amend and improve, the same. In the habit and mode of thinking of the people of this commonwealth, this principle is firmly fixed and deeply rooted. Among such a people, long accustomed to feel their own sovereignty, and to the exercise of an independent suffrage universally enjoyed, the high concern of revising their frame of government, with a view to its improvement, may on all proper occasions be resorted to with perfect safety and the best founded hopes of advantage.

Adverting to our own history, we find the frame of government, agreed upon between the proprietary and the first settlers of the province, contained many of the essential principles of civil and religious liberty. Trial, however, proved it unsuited to the state of an infant settlement to both the contracting parties. It was found necessary to change it, though that change destroyed some of the features most favorable to the sovereignty of the people; it became apparent that the attributes of prerogative in the proprietary were not reconcilable with popular sovereignty. The whole

provincial annals exhibit an almost unbroken scene of contention between the representatives of the people and the proprietary authority. The revolution was the establishment of the unquestioned sovereignty of the people. It was at first exercised without constitutional law. On no part of our history can we look back with greater approbation, at no time was order and justice more reverenced or better preserved, nor the virtue of our ancestors more illustriously displayed. Such a state of things could not have continued long without hazarding the greatest evils. It is necessary to a well constituted government, that the will of the majority should be certainly and continually operative by some uniform, fundamental and well known rule. Out of such a state of things sprang the constitution of 1776. It was the spontaneous act of the people, in their sovereign capacity. It maintained all the great principles of civil and religious liberty, previously recognised or known at the time. In fourteen years afterwards a convention was called on the recommendation of the Legislature, by whom the frame of government was new modelled. The great principles of civil and religious liberty were at this time not less reverenced than before.

That the constitution of 1790 was an improvement on that of 1776, it is presumed none will deny. It is also presumed, it will be as little denied that strong defects still exist in our frame of government. This began very seriously to be felt on a trial of ten years. A further trial of twenty years has constantly been adding to the proofs of its imperfections. In that time, the proposition of revising it has been frequently before the public, in petitions to the Legislature Insipient propositions in relation thereto have been frequently before the legislative bodies. Although the last of these was a subject of deliberation at a recent date, still further proofs of its imperfection have, in that time, been added. From the great election, in 1799, until the great election in 1823, at periods of three, and at most six years, most serious excitements have been occurring. These excitements have constantly presented increasing danger to social order and public morals. As yet, we may hope that the commonwealth has suffered but little from impurities thus engendered. But that we can escape from most serious evils, if the Governor is to continue to be invested with the uncontroled appointing power, and that at an early day too, is not allowed us to hope.

The abuse of executive discretion, in appointing justices of the peace, has been most signally displayed during the late administration. Notwithstanding the unwarrantable number of appointments, the evil is aggravated by an improper distribution of them among the population. From that cause, numbers must still be added. The complaints constantly reaching the Legislature against these officers, while it demonstrates the inconveniences the public suffer from them, it shows how difficult it is to remedy the grievance. It is not easy to prove guilt even where it exists, and when it is proved, error is plead as an excuse, and removal

by address is a rare thing. Thus, unnecessary officers, who have been appointed with characters little known to the appointing power, with much official authority, and such as is often abused with impunity, are saddled on the public by a tenure of office equivalent to one for life.

Experience confirms more strongly, every year, the inconvenience of the Legislature assembling in December, instead of January. The great body of the members will be men engaged in rural affairs. December is an inconvenient season for men thus circumstanced to leave their business. Every one must know, who has witnessed the progress of a session, that if December be the time of meeting, it will continue about four months. This will happen without either the want of fidelity or patriotism in the Legislature. Assembling early in January, would reduce the length of the sessions generally, and probably one-fourth. Until 1788, two sessions were sometimes held in a year. The constitution, as now established, confines the sessions to a single annual meeting.

Other inconveniences needing remedy might be adverted to, but it is not the purpose of your committee to present them all, nor to suggest remedial provisions. This, it will be the province of the convention to do, if one shall be called by the voice of the people. The committee however take leave to add, that the want of a provision in the constitution for amendment, they conceive to be a capital defect. It appears the more surprising, that none is to be found therein, as it was in that of which it is an improvement, and in that of the United States, after which it is obviously and confessedly modelled.

Though there is no longer any question of the right of the people, at all times, to revise and amend their constitution, yet the same unanimity has not hitherto prevailed, as to the manner of commencing the undertaking. It seems to be very obvious, such a proceeding cannot be had without the intervention of the legislative power. If nothing short of a spontaneous instruction of that power, by a majority of the people, to pass a law for the assembling of a convention, is held, to authorise such an act, the constitution will be as secure from further improvement, as if it were guarded by the bayonets of a mercenary army. It will only be when evils have become insufferable, that such a movement can be looked for. The citizens annually assemble at elections, where a peaceable, certain and facile mode of ascertaining public opinion, is presented. To the attainment of this, all that is wanted is a uniform law to regulate the receiving and ascertaining the votes. This the Legislature are not only competent to do, but of the expediency of which, they are peculiarly fitted to judge, from the nature of the trust they bear. They have a nearer view of the practical effects of the constitution, than the best informed citizen in private life. They have also a connected view of the whole of these effects, present and past.

It is the end of free government, and the high privilege of a free people, by a provident foresight and timely remedy, to guard against the occurrence of inveterate and insufferable evils. It is the great characteristic which distinguishes it from those forms which preach the sanctification of errors. In the multiplied formation of constitutions, within a few years, for new communities, and the amendment of those of older ones, in many instances, the legislative power under certain conditions, bears the trust of constitutional amendment. The constitution of the United States, through the act of the people of the states, and ratified by them, has entrusted amendments to the congress, and the state Legislatures. To this source, we owe some of the best features of that illustrious monument of human wisdom.

It cannot be necessary, seriously to combat the position, that the oath to support the constitution, taken by the members of the Legislature, restrains them at all in acting upon this subject. While the constitution is the supreme law of the land, the obligation of the oath is insuperable and inviolable; that is, until the sovereign power has altered the law. It must be absurd to contend, that a measure intended only to ascertain the will of that power, and to carry it into effect on the fundamental principle of all fundamental law, would be a dereliction of duty in the members of the Legislature, who have common rights, common interests, and common enjoyments, as a part of that power. None would deny, if a majority of the people should petition for a law to enable them more conveniently to revise their constitution, that it would become the duty of the Legislature, to obey their voice. When it is believed a great majority of the citizens hold the constitution to be defective, may not the Legislature with equal propriety, provide for the ascertainment of the public will. It is believed the two cases are perfectly analagous in principle.

If it were necessary to recur to precedent, that established in calling the convention of 1790, in principle is perfectly parallel, though much more exceptionable in detail. In that case, the voice of the majority was not ascertained, in this case, it is proposed to demonstrate it. During the last twenty years, petitions have been at different times before the Legislature, in relation to a convention. The members of the Legislature are as well informed of the state of the public opinion as representatives can or need be. The committee believe there is almost a common opinion that the constitution is defective. If the House concur with them in this belief, they deem *that fact* sufficient authority to put the question of *a convention*, or *no convention*, to the vote of the people.—It would seem even to be a duty. The committee are aware, that the question, *Is the constitution defective?* is a different one from the question, *Shall a convention be called?* Possibly, the affirmative suffrages on the two questions would be very different in number. No evil could result, if the latter question should be carried in the negative, much might be avoided were it carried in the affirmative.

The committee deem it to be a time particularly favorable to bring forward and to decide this question. The excitements of a gubernatorial election are allayed by the choice of that officer, by a commanding majority, the virtue and steadiness of whose character, are a pledge of the public tranquillity, cheering the period of his office. There is time, if it be thought advisable, to carry the measure into full effect before another triennial election. Our country is at peace, and her prospects are good to maintain it. These considerations urge most cogently the acceptance of the present opportunity.

Let it be remembered that the passage of the bill we recommend, decides nothing with regard to the call of a convention. The extent of the measure only provides a way by which to ascertain public sentiment, leaving the question to be decided by that power alone who have a right to decide. If a majority of the people are against the call of a convention, the question is at once put to rest. But if otherwise, who will pretend to say that they have not the right to alter or amend at pleasure.

It will sarcely be pretended by any, that the science of government is wholly different as it regards improvement, from all other human institutions. These, it is well known, only approach perfection by continued improvement; and so far as history throws light upon the subject, the same is the case with those of government. Let any one turn his attention to the regular march of liberty, even since the era of the reformation, and he will be convinced of the fact.

It will not scarcely be pretended that the citizens of Pennsylvania have, on this subject, evinced a restless disposition. On the contrary, with a degree of praise-worthy prudence, they have tested the principle of our present frame of government by an experience of more than thirty years; most of its provisions are dear to them as the life blood that flows in their veins. It is impossible that those principles can suffer by any course that they may see proper to take. The people will weigh the subject fairly and fully, before they give their votes in favor of a convention. Should they do so, the delegates composing the convention will bear the imprint of their constituents, and while they attempt the improvement of the existing constitution, the exceptionable parts only will be the subject of investigation and amendment, while all the rest will be adopted as a matter of course.

The committee, in offering their opinion on this important subject, wish to be understood as holding no reserve, either on the measure itself, or the propriety of the Legislature acting on the case. They are fully aware of the responsability they assume in recommending the expediency of submitting the question to the suffrages of the people, and they have no desire that it should be less. They therefore report, accompanied by a bill.